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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re S.G., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

SAMUEL G.,

Defendant and Appellant.

G043245

(Super. Ct. No. DP016767)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Dennis Keough, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Lauren K. Johnson, under appointment by the Court of Appeal, for
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen, Deputy
County Counsel; and Amy Lief for Plaintiff and Respondent.

No appearance for the Minor.

* * *

I.

Introduction

Samuel G. (Father) appeals from the order terminating his parental rights to S.G. pursuant to Welfare and Institutions Code section 366.26 (all further code references are to the Welfare and Institutions Code). Father contends substantial evidence does not support the juvenile court's finding that S.G., born in February 2008, is generally adoptable. We disagree and affirm. Although S.G. suffers developmental delays and has special needs due to possible fetal drug and/or alcohol exposure, he is young and in good health, has many positive qualities, and has no behavioral problems that are not age appropriate. He had lived with his prospective adoptive mother for over 18 months by the time of the section 366.26 hearing, and she is committed to adopting him.

II.

Facts and Proceedings in the Juvenile Court

A. The Juvenile Dependency Petition

On March 18, 2008, about 10:30 p.m., Huntington Beach police officers saw Father and Natalie G. (Mother) pushing S.G. in his stroller down a busy street. The officers arrested Father and Mother for cruelty to a child and disorderly conduct. Father also was charged with battery on a police officer. Father has a history of alcohol abuse and a criminal record including arrests for child endangerment and crimes related to alcohol abuse. Both Father and Mother had failed to obtain medical care for S.G.

The juvenile dependency petition, filed on March 19, 2008, alleged failure to protect (§ 300, subd. (b) [count 1]) and no provision for support (§ 300, subd. (g) [count 2]). At the jurisdictional hearing, the juvenile court found the allegations of count 1, as amended by interlineation, to be true by a preponderance of the evidence and dismissed count 2.

At the dispositional hearing on September 4, 2008, the juvenile court declared S.G. to be a dependent child, vested custody with the Orange County Social

Services Agency (SSA), ordered reunification services for both parents, and approved SSA's proposed case plan and visitation plan.

B. S.G.'s Physical, Medical, and Developmental Issues

By the time of the pretrial hearing on May 2, 2008, S.G. had been placed in the home of Julie T. He appeared happy and to be bonding with Julie T. At the time of the pretrial hearing, S.G. was too young for a diagnosis to be made about his developmental status. He would continue to be assessed for problems due to drug and alcohol exposure.

The Regional Center of Orange County (Regional Center) had a developmental examination of S.G. completed in October 2008, when he was seven and a half months old. The SSA status review report, dated November 19, 2008, provided this summary of the evaluation: "The child is currently functioning at 4 months in his perceptual motor development, 5 months in his cognitive development, 5 months 10 days in his receptive language development, 5 months in his expressive language development, 6-8 months in his social emotional development, 6-8 months in self care development and 5 months in his gross motor development. Some of the developmental goals for S[G.] to work towards in the future include, being able to pick up a block with one or both hands, use a sippy cup, getting the attention of others and being able to sit without support for at least 30 seconds. [¶] In conclusion, it was reported that S[G.] has possible prenatal alcohol exposure and exhibited a 33% delay overall development; with disorganized movement patterns and poor play skills. The physical therapist recommended that S[G.] receive an individual global program one time per week by a therapist to address his delays and help the foster mother facilitate normal development."

S.G. was diagnosed with global developmental delay, hyperreflexia, strabismus (cross-eyes), and microcephaly (head circumference measurement falls below second percentile). Since suffering a seizure in August 2009, he has worn a cranial

helmet while awake. In September 2009, he had surgery that successfully corrected strabismus.

*C. Mother's and Father's Failure to Comply with the Case
Plan and Termination of Reunification Services*

Mother asserted the detention report and the police report were false and denied ever using drugs or alcohol. Father also asserted the detention report and police report were false and claimed he was not intoxicated on the day of the incident. As of June 10, 2008, Mother and Father had not contacted any of the referrals they had been given for substance abuse treatment and parenting classes.

Mother did not comply with her case plan. She ultimately moved to Seattle, Washington, and told the social worker she no longer sought reunification with S.G. On January 7, 2009, the juvenile court ordered the termination of Mother's reunification services while ordering the continuation of Father's reunification services.

Father missed or cancelled numerous scheduled visits with S.G., missed medical appointments with S.G.'s ophthalmologist and neurologist, failed to attend physical therapy with S.G. on at least four occasions, missed drug tests, and submitted a diluted drug test. In April 2009, Father was charged with disobeying a domestic relations court order and resisting a police officer. In June 2009, Father was arrested for violating a restraining order protecting S.G.'s paternal grandfather. SSA recommended termination of Father's reunification services.

Following a contested 12-month/18-month review hearing on September 23, 2009, the juvenile court terminated Father's reunification services, found S.G. should not be returned to Father's custody, and set a section 366.26 hearing.

On October 14, 2009, the juvenile court granted Julie T.'s request for de facto parent status.

D. The Section 366.26 Hearing

On January 21, 2010, the juvenile court held the section 366.26 hearing. The social worker, William Libling, testified, and the court received in evidence his section 366.26 report, dated January 21, 2010 (the Section 366.26 Report).

1. The Section 366.26 Report

The Section 366.26 Report provided this description of S.G.: “Although the child, S[G.], is diagnosed with global developmental delays, hyperreflexia, strabismus and microcephaly . . . he is making marked improvements, likely due to the child receiving consistent physical and occupational therapy. The child, S[G.], is a happy and curious boy who loves to be in the company of his foster mother and foster sisters. He is social and looks to foster mother to meet all of his needs. He is not currently displaying any significant behavioral issues that are not age appropriate at this time.” It was reported that S.G. was receiving physical therapy twice a week and was at an overall skill level of 12 to 18 months.

Under the heading “Analysis of the Likelihood of Adoption and Proposed Permanent Plan,” the Section 366.26 Report stated that on September 10, 2009, Libling had received an e-mail from the adoptions supervisor stating, “it was likely that the child would be adopted.”

The Section 366.26 Report described Julie T. as “a caretaker who is knowledgeable about the child’s special needs and is able to meet them.” The report stated: “[Julie T.] had two children as a teen who she voluntarily had adopted to other families. Later, she was married for a short period of time and had three more children. The caretaker had a problem with drug addiction, but has been sober for more than 13 years. The caretaker has a positive relationship with her two adult adopted children, her adult child that she was involved in raising, and is currently successfully raising the other two children, who are teens now. The caretaker is a foster parent who is in good

health. The caretaker reports to being very satisfied with her life and presents as motivated, compassionate, responsible, and confident.”

A record clearance of Julie T. revealed that in 1997, she had been arrested and found guilty of one count of welfare fraud and one count of perjury. She was sentenced to 180 days in jail and received 60 months’ probation. Julie T. told the social worker that the arrest had occurred when she was using drugs and was “desperate for money,” she became sober shortly after the arrest.

A California Department of Justice Child Abuse Central Index clearance revealed that Julie T. had a substantiated emotional abuse report against her in April 1994. According to the incident report, Julie T. had threatened to tape her child’s mouth shut and lock her in a closet if she spent weekends with the person who reported the abuse. The incident report stated Julie T. allegedly used drugs and had a boyfriend who sold drugs, and alleged the boyfriend abused Julie T. The emotional abuse allegation had been substantiated by Julie T.’s statement that her ex-boyfriend pushed her once and that she did make the remark about taping the child’s mouth shut.

Julie T. told the social worker she could not remember the emotional abuse incident and had been using drugs at the time. There were no other child abuse reports involving Julie T.

The Section 366.26 Report concluded that Julie T. “loves [S.G.] very much and wishes to adopt him”; had the capability of meeting S.G.’s emotional, financial, and physical needs; and “is able to provide him with consistent nurturing as well as a stable and loving environment.”

2. Libling’s Testimony

Libling testified S.G. was 23 months old at the time of trial, was “preverbal,” could crawl but could not walk, and could not stand without support. S.G. is a client of the Regional Center, where he receives physical and occupational therapy and recently had begun speech therapy. It is possible S.G. will receive services from the

Regional Center for the rest of his life. Libling confirmed S.G. has been diagnosed with global developmental delays, hyperreflexia, and microcephaly, and suffers seizures.

Libling understood S.G.'s developmental delays likely were permanent but are manageable with proper treatment and could improve with therapy. Microcephaly is a permanent condition. S.G. started wearing a helmet for protection in the event he had a seizure. Libling believed S.G. was in relatively good health.

Libling believed S.G. was adoptable, in part because a de facto parent was willing to adopt him. However, Libling believed S.G. would be adoptable even if Julie T. was not willing to adopt him because he was young and it was likely others would be willing to adopt him even with his medical conditions. Libling did not work in the adoptions unit and was not aware of anyone other than Julie T. who would be willing to adopt S.G.

A home study for Julie T. had been conducted and she had been approved as a prospective adoptive parent. Libling knew Julie T. had been convicted of perjury and welfare fraud and was aware she had a history of substance abuse. He did not retrieve any of the police reports on Julie T.

Libling had no concerns with the care Julie T. had provided S.G. Although Julie T. had no formal training in dealing with S.G.'s needs, she had attended his doctor's appointments and had spoken with his physical, occupational, and special therapists. Libling had no reason to suspect Julie T. was still using drugs.

S.G. had a mother-child relationship with Julie T. and a friendly visitor relationship with Father. S.G. responded to Julie T. in a loving way and would go to her to have his needs met.

3. The Juvenile Court's Ruling

The juvenile court terminated Mother's and Father's parental rights. The court found by clear and convincing evidence that S.G. is "generally adoptable" and that adoption and termination of parental rights were in S.G.'s best interest. The court stated

that S.G.’s “constellation of needs . . . do[es] not impair the core qualities that would make the child adoptable.”

III.

Discussion

A. Legal Principles and Standard of Review

“The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.] In making this determination, the juvenile court must focus on the child, and whether the child’s age, physical condition, and emotional state may make it difficult to find an adoptive family. [Citations.] In reviewing the juvenile court’s order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time. [Citations.]’ [Citations.] We give the court’s finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming.” (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562.) “It is irrelevant that there may be evidence which would support a contrary conclusion.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

“A child’s young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability.” (*In re Gregory A., supra*, 126 Cal.App.4th at p. 1562.) The fact a prospective adoptive parent has expressed interest in adopting the minor also is evidence the child is likely to be adopted within a reasonable time. (*In re Asia L.* (2003) 107 Cal.App.4th 498, 510.)

B. Substantial Evidence Supported the Juvenile Court’s Finding of Adoptability.

Substantial evidence supported the juvenile court’s finding that S.G. is generally adoptable. S.G. is young—he was 23 months old at the time of the

section 366.26 hearing. The Section 366.26 Report described S.G. as “social” and as “a happy and curious boy who loves to be in the company of his foster mother and foster sisters.” He did not display any significant behavioral issues that were not age appropriate. The Section 366.26 Report included the conclusion of the adoptions supervisor that “it was likely that [S.G.] would be adopted.”

S.G. had been diagnosed with global developmental delays, hyperreflexia, microcephaly, and strabismus, all serious conditions. But S.G.’s developmental delays had improved with therapy. An MRI of his brain had unremarkable results. Following his seizure in August 2009, an EEG of S.G. showed results within normal limits. There were no further reports of seizures. At a wellness examination in September 2009, S.G. was found to be in good health, and surgery the same month corrected his strabismus.

As the juvenile court noted, S.G. has a “constellation of needs” that would present challenges to adoptive parents. Those challenges do not in themselves preclude a finding of adoptability. (*In re Helen W.* (2007) 150 Cal.App.4th 71, 79 [“Nowhere in the statutes or case law is certainty of a child’s future medical condition required before a court can find adoptability”].)

In addition, Julie T.’s commitment to adopting S.G. supported the finding of general adoptability. “““Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent’s willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*””” (*In re Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562.) In the case of a special-needs child, it is not necessary the prospective adoptive parent be approved before the child is deemed adoptable. (*In re K.B.*, *supra*, 173 Cal.App.4th at p. 1293.)

S.G. has been living with Julie T. since May 2008. The Section 366.26 Report stated Julie T. “loves the child very much and wishes to adopt him,” and concluded Julie T. is able to meet S.G.’s “emotional, financial, and physical concerns” and “is able to provide [S.G.] with consistent nurturing as well as a stable and loving environment.” A home study had been conducted, and Julie T. had been approved as a prospective adoptive parent. From Julie T.’s commitment to adopting S.G., the juvenile court could infer S.G. likely would be adopted by Julie T. or some other family within a reasonable period of time.

Father notes Julie T.’s criminal history and prior substance abuse, and argues the Section 366.26 Report does not address whether Julie T. received substance abuse treatment or attended parenting classes, or whether SSA will provide a waiver for the criminal convictions. While these concerns are valid, they go to the weight of the evidence of adoptability.¹ Because the juvenile court found S.G. was generally adoptable, the court did not have to consider the suitability of the adoptive home or determine whether there was a legal impediment to adoption. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061 (*Carl R.*).

Father argues there was insufficient evidence of adoptability due to a lack of current information about S.G.’s physical and developmental condition. The section 366.26 hearing was held in January 2010. According to the Section 366.26 Report, S.G. had a wellness examination by his primary care physician in September 2009, was found to be in good health, and was scheduled for another examination on March 12, 2010. Although neurological testing recommended by the Regional Center had not been conducted, an MRI of S.G.’s head was taken and the results were

¹ Julie T.’s troubled past is very much in the past. The allegation of emotional abuse occurred in 1994, and Julie T. was arrested and convicted of perjury and welfare fraud in 1997. Julie T. told the social worker she has been sober since her arrest and is diligently paying off the fine.

“unremarkable”, and an EEG of S.G. conducted in August 2009 was within normal limits. S.G. had a follow-up appointment with the neurologist scheduled for February 3, 2010. While more recent examinations might have been more desirable, those examinations and tests were sufficiently current to provide relevant evidence of S.G.’s physical condition.

As Father asserts, at the time of the section 366.26 hearing, S.G.’s most recent Regional Center evaluation was in October 2008. Father argues evidence of S.G.’s improvements in physical development lacked context without more recent information from the Regional Center. But the age of the Regional Center evaluation goes to the weight of the evidence of adoptability. The totality of evidence before the juvenile court supported a finding of adoptability notwithstanding the lack of a more recent evaluation.

Father argues SSA did not prepare a comprehensive adoption assessment report pursuant to section 366.21, former subdivision (i) and the lack of a report “undermine[s] the evidentiary basis for [the juvenile court’s] decision.” Although SSA did not prepare a separate adoption assessment report, the information required by section 366.21, former subdivision (i) is generally included in the Section 366.26 Report.²

² At the time of the section 366.26 hearing, section 366.21, former subdivision (i) provided in relevant part:

“(i)(1) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

“(A) Current search efforts for an absent parent or parents or legal guardians.

“(B) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. . . .

“(C) An evaluation of the child’s medical, developmental, scholastic, mental, and emotional status.

“(D) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse

At the time of the section 366.26 hearing in this case, the section 366.21 assessment was required to address seven specific subjects, including the child’s medical, developmental, scholastic, mental, and emotional status. (§ 366.21, former subd. (i)(1)(C).) The report had to include a preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent, a social history and criminal record of any identified prospective adoptive parent, an assessment of any prospective adoptive parent’s ability to meet the child’s needs, a description of the relationship between the child and any identified prospective adoptive parent, and an analysis of the likelihood the child will be adopted if parental rights are terminated. (§ 366.21, former subd. (i)(1)(D), (E), (G).) The Section 366.26 report in this case substantially addressed those issues.

In the juvenile court, Father did not raise the lack of a separate adoption assessment report or the sufficiency of the Section 366.26 Report to address the issues requiring assessment under section 366.21, former subdivision (i)(1). Father therefore waived any claim that the Section 366.26 Report did not comply with the requirements of section 366.21, former subdivision (i). (*In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412.)

Father compares this case to *Carl R.*, *supra*, 128 Cal.App.4th 1051, in which the adoptive parents had been approved for adoption. In *Carl R.*, the child had

or neglect, the capability to meet the child’s needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. . . .

“(E) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child’s age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

“(F) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange within the state or out of the state.

“(G) An analysis of the likelihood that the child will be adopted if parental rights are terminated.”

cerebral palsy, severe quadriplegia, a seizure disorder, and an uncontrolled and severe psychomotor delay. (*Id.* at p. 1058.) At age eight, he had the emotional maturity of an eight-month-old child. (*Ibid.*) The juvenile court terminated parental rights and found the child to be adoptable solely because a family was willing to adopt him and that family had been approved for adoption. (*Id.* at pp. 1060, 1061.) The Court of Appeal affirmed. The court concluded that when a child is deemed specifically adoptable, and the child has special needs, the juvenile court must consider whether the prospective adoptive parents can meet those needs. (*Id.* at p. 1062.) The evidence supported a finding the prospective adoptive parents would meet the child's special educational needs. (*Id.* at p. 1064.)

Comparison to *Carl R.* is not helpful because in this case the juvenile court found S.G. was generally adoptable, not specifically adoptable. Although Julie T. had been approved as a prospective adoptive parent, such approval was not required for a finding of adoptability, nor was it necessary for the juvenile court to consider whether she could meet S.G.'s special needs.

Father also likens this case to *In re Valerie W.* (2008) 162 Cal.App.4th 1 (*Valerie W.*) and *In re Brian P.* (2002) 99 Cal.App.4th 616 (*Brian P.*), both cases in which the Court of Appeal reversed orders terminating parental rights. In *Valerie W.*, the Court of Appeal concluded deficiencies in the adoption assessment report were sufficiently egregious to undermine the juvenile court's finding the two minor children were adoptable. The adoption assessment report failed to comply with section 366.21, former subdivision (i) because the report did not include information about the results of one child's EEG and most recent pediatric visit, did not provide information about that child's pending tests, did not contain any assessment of the eligibility and commitment of the prospective adoptive parents, and did not assess the ability of the prospective adoptive parents to meet the children's special needs. (*Valerie W.*, *supra*, 162 Cal.App.4th at pp. 13-14.) The court found it significant that the social services agency did not assess whether either prospective adoptive parent, who were mother and daughter, would be

willing and able to adopt the children as a single parent if the proposed joint adoption were not approved. (*Id.* at p. 14.) The adoption assessment report was inadequate for the additional reason that it did not allow the juvenile court to consider whether a joint adoption by a mother and daughter posed a legal impediment to adoption. (*Id.* at pp. 15-16.)

The Section 366.26 Report in this case differs markedly from the one in *Valerie W.* Here, the Section 366.26 Report provided the results of S.G.'s EEG performed in August or September 2009, the results of S.G.'s eye surgery conducted in September 2009, and the results of S.G.'s last wellness exam conducted in September 2009. The Section 366.26 Report noted S.G. had an appointment with the neurologist on February 3, 2010 and an appointment for a wellness exam on March 12, 2010. The Section 366.26 Report included an assessment of Julie T.'s ability and willingness to adopt S.G. and included a report of Julie T.'s criminal record and social history. In this case, unlike *Valerie W.*, the juvenile court did not make a finding S.G. was specifically adoptable, and therefore did not need to consider any legal impediments to adoption.

In *Brian P.*, *supra*, 99 Cal.App.4th at page 624, the Court of Appeal reversed the juvenile court's finding of adoptability, concluding that evidence of the likelihood of adoption was "sorely lacking." In *Brian P.*, no adoption assessment report was prepared, and the report for the section 366.26 hearing recommended a permanent plan of long-term foster care while the social services agency looked for an adoptive home. (*Id.* at p. 619.) There was no identified prospective adoptive parent, and the report concluded, "[t]here is not clear and convincing evidence that it is likely the child will be adopted at this time." (*Ibid.*) The report repeated verbatim earlier reports of assessments stating the social services agency was looking for an adoptive home, the maternal cousin was considering adoption, and the likelihood of adoption was "'good,'" but adoption was not "'[im]minent at this time.'" (*Ibid.*) At the section 366.26 hearing, the social worker who prepared the report testified she had intended to recommend

long-term foster care when she wrote the report but realized she had made an error when counsel informed her the social services agency was going to recommend termination of parental rights. (*Id.* at pp. 620-621.) At the hearing, the social worker attempted to retract the conclusion in the report that it was not likely the child would be adopted. (*Id.* at p. 621.) None of the reports or assessments mentioned the likelihood of adoption, and facts about the child’s age, physical condition, and emotional state were “fragmentary and ambiguous.” (*Id.* at pp. 624-625.)

Here, in stark contrast to *Brian P.*, the Section 366.26 Report included an adoption assessment, recommended termination of parental rights and adoption, and included a statement from the adoptions supervisor that S.G. likely would be adopted. Libling, the social worker, testified consistently with the Section 366.26 Report and did not try to retract any part of it. Information about S.G.’s age, health, and emotional state was complete and unambiguous.

IV.

Disposition

The order terminating parental rights is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.